IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12320 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KISHORE @ GUDDU GANPATBHAI VAGHELA

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR ND GOHIL, APP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 11/04/2001

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Bharda for the petitioner and ld. APP Mr. N.D. Gohil, for the respondents.

2. The petitioner has challenged the legality and

validity of the order of detention dated 21.8.2000 (Annex.A) passed by the Police Commissioner, Ahmedabad City-respondent no.2 herein, and prayed to quash and set aside the impugned order of detention by exercising jurisdiction under Article 226 of the Constitution of India. Other reliefs prayed in the petition are consequential.

3. I have considered the averments made in the petition. After going through the impugned order of detention at Annex.A, it transpires that respondent no.2 has mainly relied on certain statements and offences allegedly committed by the detenu. From the grounds of detention supplied to the detenu, it clearly transpires that detaining authority has considered the statements which were recorded on 19.8.2000. Said statements were verified by the detaining authority on 20.8.2000 and impugned order of detention was passed on 21.8.2000.

4. Mr. Tirmizi, ld. counsel appearing for the detenu has submitted that in view of the fact that exercising of verification and consideration of the statements recorded was undertaken within a very short span inasmuch as statements were recorded on 19.8.2000 and same were verified on 20.8.2000 and impugned order of detention came to be passed on the next day i.e., on 21.8.2000, it amounts to mechanical exercise and suffers from non-application of mind. The impugned order of detention, therefore, requires to be quashed and set aside on this ground alone. The detenu has raised specific plea in this regard in ground (m) to the petition. In support of his submission, he has relied on the decision of this Court (Coram : M.R.Calla, J) in the case of Ranubhai B.Bharwad v/s State, reported in 2000(3) GLR P.2696. Certain observations of this Court made in para-9 of the judgment are very relevant and I would like to quote which also refers the case of Kalidas C.Kahar v/s State of Gujarat, reported in 1993(2) GLR 1659 :-

"9. Learned Asstt. Government Pleader has submitted that in the instant case, the proposal was made by the sponsoring authority on 27th August 1999. However, he is not in a position to say as to on what date it was received by the detaining authority itself. However, one fact is established that the verification of the witnesses has been made by the detaining authority on 29th August 1999, and therefore, it must have reached the detaining authority at least on 29th August 1999 and on the next day i.e., on 30th August 1999, the detention order

has been passed. An identical situation had come up before a Division Bench of this Court in the case of Kalidas C.Kahar v. State of Gujarat & Ors., reported in 1993(2) GLR 1659. In para 6 of ths decision at page 1662, the contention has been dealt with that the detaining authority had wrongly exercised the power under Sec.9(2) of the P.A.S.A. Act and by such wrong exercise of powers the detenu's right to make a representation under Art.22(5) of the Constitution of India has been infringed. It was also considered that by statements of the witnesses had been recorded on 15th October 1992 and the said statements had been verified by the Supdt. of Police 'C' Division, Baroda City on 16th October 1992. The proposal in the case was made on 16th October 1992 and the order of detention was passed on 17th October 1992. ... . The facts of the present case are in close proximity to the facts which were considered by the Division Bench in the aforesaid case inasmuch as it has already been pointed out that the statements of the three witnesses in the instant case which were recorded before the Police Inspector on 17th August,1999, 21 August, 1999 and 25th August,1999 with regard to the incidents dated 10th July,1999, 13th June, 1999 and 26th June,1999, are the material along with the proposal which is said to have been made on 27th August, 1999 and it is clear from the record that it was on 29th August,1999 the detaining authority has recorded its verification of all those three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August,1999 at any time prior to 29th August,1999 and on 29th August,1999, all that has been done is that the concerned witnesses have stated before the detaining authority that their statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e., on 30th August,1999 the detention order has been passed. Therefore, I find that identical fact situation was obtaining in the case before the Division Bench is there, and it is the case of wrong exercise of power under Sec.9(2) of the Act because the detaining authority had no sufficient time for the purpose of verification of the facts which were required for the purpose of satisfaction to invoke privilege under Sec.9(2). Merely because in the facts before the

Division Bench the proposal itself was made on 16th October,1992 and the order was passed on 17th October,1992 and in this case the proposal was made on 27th August,1999, the verification of the statements were made by the detaining authority on 29th August,1999 would not make any difference. Such a difference of a day or two here and there is hardly sufficient to inspire confidence that the detaining authority had the sufficient time for the purpose of verification of the facts which are necessary to lead to invoking the privilege under Sec.9(2) of the Act. In this case also the manner in which the verification has been recorded of the statements made by these three witnesses for the purpose of Sec.9(2) shows that the same has been done only as an empty formality inasmuch as the same witnesses had been called before the detaining authority and the detaining authority had recorded that whatever the statements made by the witnesses were correct. Thus, the whole exercise appears to have been done as a mechanical exercise and it is not borne out that there is an active application of mind on this aspect of the matter by the detaining authority for the purpose of verification of the facts as had been disclosed by the witnesses so as to express the fear and to invoke the privilege under Se.9(2) against the disclosure of the names and addresses of the witnesses and it thus appears on the basis of the ratio of the decision of the Division Bench that it is a case of wrong exercise of power under Sec.9(2) and it is established that in such cases, the wrong exercise of power under Sec.9(2) adversely affects the detenu's right of making an effective representation guaranteed under Art.22(5) of the Constitution of India."

5. Relying on the very same judgment, this Court (Coram: S.K.Keshote,J), vide oral judgment dated 14.2.2001 in Spl.C.A. No. 12675/2000 in the case of Prejmi Ramji @ Ramesh Patel v/s Commissioner of Police & Anr., has quashed and set aside the order of detention passed against detenu Premji.

6. Ld. APP Mr. Gohil has mainly relied on the affidavit filed by respondent no.2 resisting the petition, but has fairly accepted that the ratio of the decision in the case of Ranubhai Bharwad (supra) relied

on by the ld. counsel appearing for the detenu, squarely applies to the facts of the present case.

7. Hence, without going into further discussion, in view of settled legal position referred to above, this petition is allowed. Impugned order of detention dated 21.8.2000 passed by the Commissioner of Police, Ahmedabad City- respondent no.2 is hereby quashed and set aside. Detenu Kishore @ Guddu Ganpatbhai Vaghela be set at liberty forthwith if not required to be detained in any other case.

8. Rule is made absolute. No costs. Direct Service is permitted.

11.4.2001 [C.K. BUCH, J]
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